aware that the charge was in fact a consolidation of the three amended charges to which he had earlier claimed trial. If the process was reversed, that is to say, if the prosecution had proceeded with the three amended charges there would have been only one trial. I am satisfied that the accused was neither prejudiced nor has there been a failure of justice and I accordingly hold that the charge though bad for duplicity is an irregularity which is cured by section 422.

I next deal with the subsequent conduct of the case. After the accused had pleaded guilty to the charge, the learned counsel made a plea in mitigation to which the learned Deputy Public Prosecutor said he was not pressing for sentence. In the event the learned Magistrate did not record a conviction and proceeded to bind over the accused to be of good behaviour for a period of three years in the sum of $10,000 in one surety under section 173A of the Criminal Procedure Code. I called this case for revision to satisfy myself as to the propriety of this order.

The power of a court to discharge an offender conditionally is subject to certain conditions which may be briefly summarised as follows:

(i) Regard to character, antecedents, age, health or mental condition of the person charged; or

(ii) The trivial nature of the offence; or

(iii) The extenuating circumstances under which the offence was committed.

Under the first head the only thing that was said of the accused is that he had no previous conviction. Under the second head, this offence is far from trivial. Under the third head, the only excuse he had was that he was pressed for money. There is nothing extenuating about that. It is different if the accused was an underpaid cashier entrusted with large sums of money and had in a moment of weakness succumbed to the temptation to steal his employer's money. Here the offences committed by the accused were deliberate and sophisticated, committed several times, over a period of time, involving a large sum of money. The warrants were specially printed to achieve his illegal purpose and the crime was perpetrated by exploiting the weaknesses of a complicated financial arrangement involving several parties. In my view an order under section 173A of the Criminal Procedure Code is inappropriate and manifestly inadequate in this case.

The object of a sentence is to punish the offender and the sentence should be sufficiently adequate to deter the offender from repeating the offence and at the same time to act as a deterrent to others who might be disposed to commit such an offence. We have developed a comprehensive banking system in this country but this achievement is based on mutual trust and integrity of the parties. What the accused has done here is to shake the confidence of bankers in dealing with customers who are in business like the accused and put honest businessmen in greater hardships to finance their trade. Courts must now appreciate that commercial crime is a very serious offence. It affects our international standing abroad and our trade relations with other countries. It affects the government's efforts at expanding the economy. Millions of ringgit are lost every year due to falsifications and forgeries committed by persons like the accused. Losses suffered by banks through commercial crime is much more than by robberies at the point of a gun.

In all the circumstances of this case, I set aside the order under section 173A of the Criminal Procedure Code and substitute therefore a conviction under section 471 read with section 465 of the Penal Code and sentence the accused to a fine of $10,000 in default two years' imprisonment.

Order accordingly.

Solicitors: *Hassan & Kong Yeam.*

GANGAGHARAN v. SATHIABHAMA

[A.C.J. (Abdul Razak J.) November 27, 1978]
[Kuantan — Civil Appeal No. 3 of 1978]

Family Law — Maintenance — Jurisdiction — Claim for arrears of maintenance amounting to $11,200 — Jurisdiction of Subordinate Courts — Subordinate Courts (Amendment) Act, 1978.

Practice and Procedure — Jurisdiction — Jurisdiction of Subordinate Courts — Maintenance — Claim for arrears of maintenance amounting to $11,200 — Subordinate Courts (Amendment) Act, 1978.

The appellant in this case appealed against the decision of the learned President Sessions Court wherein he gave judgment for the plaintiff/respondent in the sum of $11,200 for arrears of maintenance. The appellant claimed, *inter alia*, that the court had no jurisdiction to make any order for $11,000 since it exceeded his jurisdiction and that the learned President had failed to consider the principle that as a matter of practice, arrears are allowable only for a period of one year.

The Subordinate Courts (Amendment) Act 1978 which empowered the learned President to make an order for an amount not exceeding $10,000 came into effect on July 1, 1978. The learned President made the order on March 6, 1978, four months before the amendment.

Held, allowing the appeal: (1) it has been the practice of the Divorce Division (England) to order payments of arrears not exceeding one year unless there are special circumstances. The rationale behind this lies in the fact that the court treats the payment as a fund for maintenance and not as property;

(2) at the relevant time the learned President was empowered only to make an order not exceeding $2,000 which was the law before the amendment. The respondent would thus be awarded the sum of $1,200 instead as the arrears of maintenance for a period of one year.

Cases referred to:-

(1) *Pilcher* v. *Pilcher No. (2)* [1956] 1 All E.R. 463.
(2) *Kerr* v. *Kerr* [1897] 2 Q.B. 439.
(3) *Amrick Lall* v. *Sowbaiavati* [1973] 2 M.L.J. 191.

CIVIL APPEAL.

Wong Fook Hin for the appellant.

Joseph Au for the respondent.

Cur. Adv. Vult.

Abdul Razak J.: This is an appeal against the decision of the learned President Sessions Court wherein he gave judgment for the plaintiff/respondent in the sum of $11,200. The sum was for the arrears of maintenance from August 1968 until March 1978.

It is common ground that the appellant and respondent were married. It is also common ground

that an order was made by the court below that the appellant pay the respondent $100 per month with effect from October 1, 1966 arising from which the present appeal arose. She alleged that the payments were in arrears from August 1968. The respondent had served notice on the appellant for the arrears in June 1967 for the sum of $400. It was duly paid. The record showed that the due process of the law was not resorted to until February 14, 1977 when the President Sessions Court made the order appealed against.

There were basically three grounds of appeal. It was contended firstly, that the learned President Sessions Court was wrong in his conclusions on the facts that the appellant had failed to maintain the respondent. Secondly, that the court had no jurisdiction to make an order for $11,000 since it exceeded his jurisdiction. Thirdly, that the learned President had failed to consider the principle laid down in *Pilcher* v. *Pilcher*[1] where arrears as a matter of practice are allowable only for a period of one year.

I do not think I need say more on the first ground except that in my humble view the learned President Sessions Court had come to his decision correctly that the appellant had not made due payment to the respondent by reason of which the court below made the order ordering him to pay. Much was said of the fact that the learned President Sessions Court had failed to consider the fact that she had made substantial deposits with some financial institutions or another from money which traced itself to none other than the appellant. The respondent had explained in the court below the sum as having been received from the sale of her property in India. That may or may not be so but the learned President Sessions Court believed her. I have no reason to find that he was wrong in his conclusion. There was nothing to suggest that the sale had not taken place or that she had not received them but what I think made him decide against the appellant was the fact that the payment ordered to be paid in court was to be deposited in court. If in fact the order was duly complied with it was strange that he had not produced any receipt to evidence it as the court would duly have issued one.

There are two grounds on which I would allow the appeal. Firstly, because the President Sessions Court had apparently not considered the principle laid down in *Pilcher* v. *Pilcher* stated above by which it had been held following the principle enunciated in *Kerr* v. *Kerr*[2] that it had been the practice of the Divorce Division to order payments of arrears unless there are special circumstances for period not exceeding one year. The rationale behind this lies in the fact that the court treats the payment as a fund for maintenance and not as property. The principle was followed by Pawan Ahmad J. in *Amrick Lall* v. *Sowbaiavati.*[3] I do not see why in our case we should depart from that common law practice. Neither are there any special circumstances which would merit it.

Be that as it may the appeal should be allowed because it would appear the President Sessions Court had no jurisdiction to make the order which he did. The order was made under the Subordinate Courts (Amendment) Act, 1978 which came into effect on July 1, 1978 but the order itself was made on March 6, 1978 nearly four months earlier. The amendment empowered him to make an order for an amount not exceeding $10,000. He was empowered only therefore at the relevant time to make an order not exceeding $2,000 which was the law before the amendment. I would therefore allow the appeal and vary the President Sessions Court's order and award the sum of $1,200 instead as the arrears of maintenance for a period of one year.

Order accordingly.

Solicitors: *Tan Chin Yong & Appaduray; Au Ah Wah & Co.*

TAN TIK SING v. GOMEZ DEVELOPMENT CO. SDN. BHD.

[O.C.J. (Ajaib Singh J.) August 20 & December 14, 1978]
[Muar — Civil Suit No. 125 of 1978]

Practice and Procedure — Summary judgment — Application for — Failure of applicant to verify that "in his belief there is no defence to the action" — R.S.C. 1957, O. 14 r. 1(a), O. 14A r. 1(1).

On June 6, 1978 the plaintiff by a specially indorsed writ sued the defendants for specific performance of an agreement of sale dated August 18, 1973 in respect of a piece of land and a house to be erected thereon. The plaintiff claimed that under the agreement the defendants were required to build the house and transfer it to him on or before August 18, 1975 but the defendants had failed to do so. The defendants in their defence stated that there was an implied condition precedent that the commencement of the construction of the house on the land was subject to the approval of the local authorities which was granted to them only on November 29, 1977. The defendants also contended that the agreement became incapable of performance because of the delay on the part of the local authorities whereby the cost of building materials and labour had escalated rendering the contract voidable.

Nowhere in the affidavit in support of his application for summary judgment nor in his affidavit in reply to the defendants' affidavit did the plaintiff state that in his belief there was no defence to the action.

Held, dismissing the plaintiff's application: (1) the clear provisions of Order 14 rule 1(a) and Order 14A rule 1(1) are mandatory and they must be complied with if a plaintiff wants to get judgment without any trial whatsoever;

(2) in the present case the plaintiff had failed to say on affidavit that in his belief there was no defence to the action. The plaintiff's application for summary judgment under Order 14A was therefore deficient for want of compliance with rule 1(1) of the order.

Case referred to:-

(1) *Daiman Development Sdn. Bhd.* v. *Mathew Lim Chin Teck* [1978] 2 M.L.J. 239.

SUMMONS-IN-CHAMBERS.

Chua Jui Meng for the plaintiff.

M.S. Miranda (*Thara Singh Sidhu* with him) for the defendants.

Cur. Adv. Vult.

Ajaib Singh J.: In an application for summary judgment under Order 14 or Order 14A of the Rules of the Supreme Court the person making the affidavit in support must verify the cause of action and state that in his belief there is no defence to the action.